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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

KENNETH GLENN VALENTINE,

Defendant and Appellant.

F043078

(Super. Ct. No. 02-97509)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Joseph A. Kalashian, Judge.

Gregory M. Chappel, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Stan Cross and Julie A. Hokans, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Harris, Acting P.J., Cornell, J., and Dawson, J.

A jury convicted appellant, Kenneth Glenn Valentine, on two counts of second degree robbery (Pen. Code,¹ §§ 211, 212.5, subd. (c)). On appeal, Valentine contends the court erred when it ordered him to supply two blood specimens, a saliva sample, right thumbprints and full palm prints pursuant to section 296. We will find merit to this contention and modify the judgment accordingly. In all other respects we will affirm.

FACTS

On August 28, 2002, Valentine robbed an A & W restaurant in Tulare of approximately \$160.

On August 30, 2002, Valentine robbed Sally's Beauty Supply in Tulare of approximately \$300.

On May 6, 2003, the court sentenced Valentine to an aggregate term of four years, the middle term of three years on one conviction and a consecutive one-year term on the second conviction. The court also ordered, pursuant to section 296, that prior to his release from custody Valentine provide two blood specimens, a saliva sample, right thumbprints, and a full palm print impression for each hand.

DISCUSSION

Valentine contends the court erred in ordering that he provide the above noted specimens, samples, and prints because section 296 does not apply to second degree robbery. Respondent concedes and we agree.

Section 296, subdivision (a)(1) provides:

“Any person who is convicted of any of the following crimes, or is found not guilty by reason of insanity of any of the following crimes, shall, regardless of sentence imposed or disposition rendered, be required to provide two specimens of blood, a saliva sample, right thumbprints, and a full palm print impression of each hand for law enforcement identification analysis[.]”

¹ All statutory references are to the Penal Code, unless otherwise indicated.

Section 296, subdivisions (a)(1)(A) through (a)(1)(N) lists first degree robbery (§ 296, subd. (a)(1)(K)), but not second degree robbery. Accordingly, we agree with the parties that the court erred as Valentine contends.

DISPOSITION

The judgment is modified to strike the requirement that prior to being released from custody Valentine provide two blood specimens, a saliva sample, right thumbprints, and a full palm impression of each hand. The trial court is directed to issue an amended abstract of judgment consistent with this opinion and to forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed.